

Howells Maritime Services

Standard Terms and Conditions

1. Definitions

“Surveyor”/ “Consultant” is the Surveyor/Consultant trading under these conditions.

“Agreement” means the Terms and Conditions as set out below.

“Client” is the party at whose request or on whose behalf the Surveyor/Consultant undertakes surveying services.

“Report” means any report or statement supplied by the Surveyor/Consultant in connection with instructions received from the Client.

“Expenses” means the cost of all reasonable photography, reproduction of drawings, diagrams, sketches and printing, duplicating and, where applicable, electronic transmission fees, and all reasonable and appropriate expenses including travel, subsistence and hotel accommodation where an overnight stay is necessary.

“Fees” means the fees charged by the Surveyor/Consultant to the Client and including any value added tax where applicable and any Disbursements.

2. Scope

The Surveyor/Consultant shall provide its services solely in accordance with this Agreement.

3. Work

The Client will set out in writing the services which it requires the Surveyor/Consultant to provide.

The Surveyor/Consultant will confirm in writing that it accepts those instructions or alternatively what services it will perform in connection with the Client’s instructions. Once the Surveyor/Consultant and the Client have agreed what services are to be performed, any subsequent changes or additions must be agreed by both parties in writing.

4. Fees and Payment

(a) The Fees agreed between the Surveyor/Consultant and the Client for the services to be provided by the Surveyor/Consultant under this Agreement shall not include the Surveyor/Consultant’s Expenses which will be charged in addition to the fee.

(b) Invoices shall be submitted in respect of all Fees and Expenses when due and the amount of each invoice shall be paid no later than 30 days following the date of invoice. From time to time and where agreed in writing, payment of Fees and Expenses shall be paid upfront and prior to the commencement of services. GST shall be applicable in addition to all fees and expenses. Any delay in payment shall entitle the Surveyor/Consultant to interest at 4% above the Base Lending Rate of the Commonwealth Bank of Australia prevailing at the time of the default.

(c) For new clients, payment shall be made in full prior to the release of any Report or information.

(d) Where the Client is acting as an agent in requesting the provision of services, the Client agrees to be liable jointly and severally with its principal for all amounts payable to the surveyor pursuant to this Agreement.

- (e) If the engagement of the Surveyor/Consultant is terminated for any reason other than a breach of the Agreement by the Surveyor/Consultant, the surveyor shall be entitled to a pro rata payment for the services carried out and consequential costs and expenses incurred as a result of the termination for the period up to and including the date of termination.
- (f) If the Client disputes the whole or any part of the amounts invoiced to it by the Surveyor/Consultant, the Client agrees to pay that part which is not in dispute and to notify the Surveyor/Consultant in writing of any reasons for disputing the unpaid part at the time of payment. If the parties are unable to reach agreement within 7 days of notification of the dispute, then the dispute shall be determined in accordance with Clause 5. If it is found that some or all of the part in dispute ought to have been paid at the time it was invoiced, then the Client shall pay that part together with interest on that part calculated in accordance with Clause (4)(b).

5. Dispute Resolution

If a dispute arises in relation to the payment of Fees and Expenses under this Agreement and the dispute cannot be resolved within seven days of the notification of the dispute the parties to the Agreement agree to endeavour in good faith to settle the dispute by mediation administered by Australian Commercial Disputes Centre (ACDC) and in the event that the mediation is unsuccessful to submit the dispute to arbitration.

- a. The mediation shall be conducted in accordance with the ACDC Guidelines for Commercial Mediation which are operating at the time the dispute is referred to ACDC. The Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved. The terms of the Guidelines are hereby deemed to be incorporated into the Agreement.
- b. In the event that the dispute has not settled within 28 days after the appointment of the mediator, or such further period as agreed to in writing by the parties, the dispute shall be submitted to arbitration in Brisbane administered by ACDC in accordance with the ACDC Rules for Arbitration operating at the time the dispute is referred to arbitration which are hereby deemed incorporated into this Agreement.
- c. The arbitrator shall not be the same person as the mediator.
- d. This clause shall survive termination of this agreement.

6. Obligations and Responsibilities

- (a) Client: The Client undertakes to ensure that full instructions are given to the Surveyor/Consultant and are provided in sufficient time to enable the required services to be performed effectively and efficiently and to procure all necessary access for the Surveyor/Consultant to goods, premises, vessels, installations and transport and to ensure that all appropriate safety measures are taken to provide safe and secure working conditions. The Surveyor/Consultant shall not be liable for the consequences of late, incomplete, inadequate, inaccurate or ambiguous instructions.
- (b) Surveyor/Consultant: The Surveyors/Consultants intention is to report on the condition of the hull(s), superstructures and fixtures (if any) of the vessel so far as can be reasonable be ascertained from a visual inspection for the vessel at its location at the time of the survey. It is further agreed and understood that during the course of the survey; only those components or items which the Surveyor/Consultant can reasonably inspect under the conditions present at the time of the survey shall be inspected. The Surveyor/Consultant cannot cover hidden, unexposed or inaccessible areas of the vessel, nor can the Surveyor/Consultant undertake to investigate areas that the Surveyor believes to be inaccessible at the time of inspection. Where the Surveyor/Consultant is unable to gain

access to areas commonly accessible, the Surveyor/Consultant will endeavour to point this out.

- (c) Engines and drive components shall not be disassembled, bulkheads and partitions shall not be removed and electrical systems shall not be traced or analysed unless specifically requested (and additional fee agreed upon). Any system or component observed shall be observed under normal operating conditions or conditions as closely approximating normal operating conditions as is possible. In any event the conduct of the marine surveyor/consultant shall be at all times reasonable under the circumstances and no more.
- (d) In every case, the Surveyor/Consultant recommends a full survey of a vessel, to include inspection of the vessel while lifted out and while in the water. Where the Surveyor accepts instructions to survey a vessel solely on the basis of an inspection of the vessel out of the water, the Surveyor/Consultant makes no representations and gives no warranty as to the watertight integrity or buoyancy of the vessel.
- (e) The Surveyor/Consultant shall use reasonable care and skill in the performance of the services in accordance with sound marine surveying/consulting practice.
- (f) Reporting: The Surveyor/Consultant shall submit a final written Report to the Client following completion of the agreed services describing the Surveyor's/Consultant's findings and the condition and/or quality of the object and/or purpose of the assignment, unless otherwise expressly instructed by the Client not to do so.
- (g) All services and reports are provided for the Client's use only. No liability of any nature is assumed towards any other party and nothing in those terms, or the relationship between the surveyor and the client shall confer or purport to confer on any third party a benefit or the right to enforce and provisions of these terms.
- (h) Confidentiality: The Surveyor/Consultant undertakes not to disclose any information provided in confidence by the Client to any third party and will not permit access to such information by any third party unless the Client expressly grants permission in writing, save where required to do so by an order of a competent court of law.
- (i) Property: The right of ownership in respect of all Reports and original work created by the Surveyor/Consultant remains the property of the Surveyor/Consultant.
- (j) Conflict of Interest/Qualification: The Surveyor/Consultant shall promptly notify the Client of any matter including conflict of interest or lack of suitable qualifications and experience, which would render it undesirable for the Surveyor/Consultant to continue its involvement with the appointment. The Client shall be responsible for payment of the Surveyor/Consultant's Fees up to the date of notification.

7. Liability

- (a) Without prejudice to Clause 8, the Surveyor/Consultant shall be under no liability whatsoever to the Client for any loss, damage, delay or expense of whatsoever nature, whether direct or indirect and howsoever arising UNLESS same is proved to have resulted solely from the negligence, gross negligence or wilful default of the Surveyor/Consultant or any of its employees or agents or sub-contractors.
- (b) Where the Competition and Consumer Act 2010 guarantees do not apply and in the event that the Client proves that loss, damage, delay or expense was caused by the negligence, gross negligence or wilful default of the Surveyor/Consultant aforesaid, then save where the loss, damage, delay or expense has resulted from the Surveyor's/Consultant's personal act or omission committed with the intent to cause same or recklessly and with knowledge that

such loss, damage, delay or expense would probably result, the Surveyors liability for each incident or series of incidents giving rise to a claim or claims shall never exceed a sum calculated on the basis of ten times the Surveyors charges or AU\$100,000.00 whichever is the greater.

- (c) Notwithstanding the terms set out in this agreement, these conditions are subject to the Competition and Consumer Act 2010 as amended if and to the extent that this Act implies a guarantee into this agreement and prevents the exclusion, restriction or modification of any such guarantee. The liability of the Surveyor/Consultant, if any, for breach of any guarantee so implied (other than where the Services are of a kind ordinarily acquired for personal, domestic or household consumption) shall be limited at the option of the Surveyor/Consultant to:
- i) The supply of the Services again, or
 - ii) The payment of having the Services supplied again.
- (d) Valuations are based on opinions only and are not representations of fact, nor do they carry with them any guarantee of the particulars of information on which opinions are based. The Surveyor/Consultant shall use its best endeavours to provide a valuation which represents, in its opinion, the current market valuation, as defined in the reporting document, of the item to be valued or such other valuation as may be identified in the valuation report but no warranty as to the accuracy of such valuation is given.
- (e) The Surveyor/Consultant shall not be liable for loss of or damage to equipment and other items placed at its disposal by or on behalf of the Client however such loss or damage occurs.

8. Indemnity

Except to the extent and solely for the amount therein set out that the Surveyor/Consultant would be liable under Clause 7, the Client hereby undertakes to keep the Surveyor/Consultant and its employees, agents and sub-contractors indemnified and to hold them harmless against all actions, proceedings, claims, demands or liabilities whatsoever or howsoever arising which may be brought against them or incurred or suffered by them, and against and in respect of all costs, loss, damages and expenses (including legal costs and expenses on a full indemnity basis) which the Surveyor/Consultant may suffer or incur (either directly or indirectly) in the course of the services under this Agreement.

9. Force Majeure

Neither the Surveyor/Consultant nor the Client shall, except as otherwise provided in this Agreement, be responsible for any loss, damage, delay or failure in performance hereunder arising or resulting from act of God, act of War, seizure under legal process, quarantine restrictions, strikes, boycotts, lockouts, riots, civil commotions and arrest or restraint of princes, rulers or people.

10. Insurance

The Surveyor/Consultant shall effect and maintain, at no cost to the Client, Professional Liability Insurance for such loss and damage for which the Surveyor/Consultant may be held liable to the Client under this Agreement.

11. Surveyor's/Consultant's Right to Sub-contract

The Surveyor/Consultant shall have the right to sub-contract any of the services provided under the this Agreement, subject to the Client's right to object on reasonable grounds.

12. Time Bar

- (a) Any claim by the Client in respect of any breach of the Surveyors obligations under this Agreement must be notified to the Surveyor within three months after the client becomes aware of the breach. Where any breach is capable of remedy, the Surveyor must be afforded a reasonable opportunity to put matters right at his expense.
- (b) Any claims against the Surveyor/Consultant by the Client shall be deemed to be waived and absolutely time barred upon the expiry of one year from the submission date of the Report to the Client.

13. Jurisdiction and Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Queensland, Australia and any dispute shall be subject to the exclusive jurisdiction of the Queensland Courts. Howells Maritime Services reserves all rights, including copyright, trademarks and other intellectual property rights, in these standard trading conditions and no part thereof can be redistributed, republished or stored in any format without the express written permission of Howells Maritime Services.

14. Miscellaneous

- (a) References to "Surveyor/Consultant" include the Surveyors/Consultants employees and persons, firms and companies appointed or engaged by the Surveyor as the Surveyors agents for carrying out any work or services under these terms, all persons, firms and companies to whom performance of any work or services under these terms is sub-contracted or delegated by the Surveyor and all agents and employees of persons, firms and companies referred to in this clause. Every exemption, limitation, condition and liberty contained in this Agreement and every right, exemption from liability, defence and immunity of whatsoever nature applicable to the Surveyor/Consultant or to which the Surveyor/Consultant is entitled in this Agreement shall also be available and shall extend to protect the Surveyors/Consultants employees and persons, firms and companies appointed or engaged by the Surveyor/Consultant.